

REMARKS

This is intended as a full and complete response to the non-final Office Action dated December 15, 2005.

Claims 1-22 and 25-28 remain in this application. Claims 10, 14 and 18 have been previously amended.

Claims 2, 4 and 14 are currently amended.

Claims 18, 19, 20, 21, 22, 25 and 26 are currently cancelled.

Claims 23 and 24 were previously cancelled.

Claims 27 and 28 were previously presented.

The three month statutory period for response expired March 15, 2006. Accordingly, this response is being presented concurrently with a one month Request for Extension of Time under 37 C.F.R. § 1.136(a). Therefore, this response is being presented in a timely manner.

This response is being filed in accordance with recently revised 37 C.F.R. § 1.121, as set forth in 68 F.R. 38611 (June 30, 2003). If any amendment is considered to be not in compliance with recently revised 37 C.F.R. § 1.121, the Examiner is respectfully requested to contact the undersigned at his earliest possible convenience.

Reexamination of the application as amended, reconsideration of the rejections, and allowance of the claims remaining for consideration are respectfully requested.

## AMENDMENTS TO THE APPLICATION

Entry of the amendments to the application is respectfully requested. As detailed below, they introduce no new matter.

Claims 2 and 4 were amended to remove the limitation referring to administering a temperature altering regiment to a horse's neck, in order to further emphasize the multiple differences between claims 2 and 4 of the present application and the teachings of Tadauchi et al. Support for the subject matter of amended claims 2 and 4 is repeatedly found throughout the specification, for example at page 4 line 26 to page 5 line 5 wherein it is described that the cavities containing the temperature altering elements can be placed at a variety of strategic locations on the animal cover. No new matter has been added by the amendments to claims 2 and 4 of the present invention.

Claim 14 was amended to remove dependency upon a rejected base claim, in order to place the claim in condition for allowance pursuant to Examining Attorney's recommendation. Therefore, claim 14 is rewritten in independent form including all of the limitations of the base claim and any intervening claims. Support for the subject matter of amended claim 14 is found throughout the specification and no new matter has been added by this amendment.

Claims 18, 19, 20, 21, 22, 25 and 26 are currently cancelled to expedite the prosecution and allowance of the remaining claims. Therefore, no new matter has been added by cancellation of claims 18, 19, 20, 21, 22, 25 and 26.

Accordingly, Applicants respectfully request entry of the above amendments to claims 2, 4, 14, 18, 19, 20, 21, 22, 25 and 26 of the present application.

## SUMMARY OF THE OFFICE ACTION

Claims 1-22 and 25-28 are pending in the present application. In the most recent Office Action, the Examining Attorney rejected claims 1-22 and 25-28 of the present application under 35 U.S.C. § 102(b) and 103(a). Examining Attorney objected to claims 14, 15 and 22 of the present application as being dependent upon a rejected base claim, stating that claims 14, 15 and 22 would be allowable if rewritten in independent form.

Applicants respectfully wish to traverse Examining Attorney's above-referenced rejections. In light of the arguments made below traversing the Examining Attorney's rejections, Applicants respectfully request the Examining Attorney to reconsider and withdraw previously made rejections and allow the present application to issue.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 102

#### **Tadauchi, et al., Japanese Patent Number JP 10113088 A (JP088):**

Claims 1, 2, 4-7, 13, 16, 18, 21, 25, 27, 28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Tadauchi et al.

According to the established principles of patent law, a determination of anticipation, as well as obviousness, involves two steps. First it is necessary to properly construe the claim, which is then followed by a comparison of the construed claim to the prior art. *Key Pharmaceuticals Inc. v. Hercon Laboratories Corp.*, 161 F.3d 709, 48 USPQ2d 1911 (Fed. Cir. 1998). In *Key Pharmaceuticals Inc.*, the issue of anticipation turned on claim interpretation.

To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of that claim. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Moreover, anticipation under 35 U.S.C. § 102

requires that the single source must disclose all of the claimed elements “arranged as in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). The anticipatory reference must also “sufficiently describe the claimed invention to have placed the public in possession of it.” *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1572, 24 U.S.P.Q. 2d 1321, 1332 (Fed. Cir. 1992). As the Federal Circuit has held, to constitute an anticipatory reference, the prior art must possess an enabling disclosure. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1578, 18 U.S.P.Q. 2d 1001, 1011 (Fed. Cir. 1991).

Claim 1:

Examining Attorney stated that Tadauchi et al. anticipates claim 1 of the present invention because it teaches an animal cover 1 comprising a body having an interior and exterior side; a plurality of cavities 22, 23 strategically located within the body; and a temperature altering device 21, 24.

Claim 1 of the present invention teaches an animal cover adapted to conform to the shape of an animal’s body to deliver a temperature to a specific targeted area of the body, the animal cover comprising: a) a body of the animal cover having an interior and exterior side; b) a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regiment to a targeted area of the animal’s body; and c) a temperature altering device.

Tadauchi et al. does not anticipate claim 1 of the present invention because Tadauchi et al. does not contain all of the elements of that claim. Namely, Tadauchi et al. fails to disclose all of the claimed elements of claim 1 of the present invention, since it does not disclose an animal cover, a plurality of cavities strategically located within the body of the animal cover, and a temperature altering device. Tadauchi et al. discloses a covering for a horse’s head, where the purpose of such covering is to cool the horse’s head by use of coolant contained within the head covering. Since the covering of Tadauchi et al. only attaches to the horse’s head, by definition it is only capable of

providing cooling effect to one narrow segment of the horse' body, namely its head. The animal cover of claim 1 of the present invention extends to the entire body of the animal, allowing user to target specifically defined areas of the animal's body with a temperature altering regiment, namely administering a heating and/or cooling effect or any combination thereof to any specific area or areas of the animal's body.

Additionally, Tadauchi et al. does not teach an animal cover adapted to conform to the shape of an animal's body, since it only discloses a head covering made out of inelastic, rigid material such as vinyl leather. The head covering of Tadauchi et al. by definition only covers a limited portion of the horse's body, namely its head, rather than the animal's entire body and it is intended to be loosely held over the animal's head via mechanical means of attachment, such as hooks and loops, rather than adopt to the shape of the individual user animal through the elasticity of the animal cover.

For the above reasons, Tadauchi et al. does not anticipate claim 1 of the present invention because it neither discloses nor enables all of the elements of claim 1 of the present invention.

Claims 2 and 4:

Examining Attorney stated that Tadauchi et al. anticipates claims 2 and 4 of the present invention because it teaches cavities that are located in the neck area of horse head covering.

Applicants believe that current amendments to claims 2 and 4 fully address Examining Attorney's rejection by removing a reference to cavities located in the neck area of a horse cover.

Since Tadauchi et al. does not disclose or enable any of the remaining elements of claims 2 and 4 as currently amended, Applicants emphasize that Tadauchi et al. does not anticipate claims 2 and 4 of the present invention.

Claims 5 and 7:

Examining Attorney stated that Tadauchi et al. anticipates claims 5 and 7 of the present invention because it teaches the temperature altering device being removably located within the cavities (according to the Examining Attorney, the altering device is located in the cavity and both the altering device and the cavity can be disconnected from the VELCRO 32, which allegedly makes them removably located).

Claim 5 of the present invention teaches an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, the animal cover comprising: a) a body of the animal cover having an interior and exterior side; b) a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body; and c) a temperature altering device, wherein the temperature altering device is located within the plurality of cavities.

Tadauchi et al. does not anticipate claim 5 of the present invention because it neither discloses nor enables the elements of that claim, namely an animal cover adapted to conform to the shape of an animal's body, a plurality of cavities strategically located within the body of the animal cover, and a temperature altering device located within the plurality of cavities.

Tadauchi et al. only discloses a harness for cooling the head of a horse comprising a head harness, and alternatively a neck cover connected to the head harness using hook and loop fastening. The cooling of the horses head takes place using a cooling material that is attached to the head harness using hook and loop. These cooling materials are placed at the forehead region of the horse's head while the harness fasteners are placed at the throat latch of the horse's head. There is no disclosure in Tadauchi et al. that the cooling materials are adjustable or capable of being located on multiple locations throughout the head harness. Further, Tadauchi et al. teaches only the cooling of the head of a horse, and more specifically, the forehead region of the horse, and the cooling of the

neck of a horse. Furthermore, the head harness disclosed in Tadauchi et al. is made out of rigid inflexible materials, so that the head harness is simply loosely secured over the animal's head and neck via a hook and loop fastening system, with no reference to the head harness being capable of adapting to the shape of the animal's head. As the Examining Attorney is undoubtedly aware, claim 5 of the present invention is directed to an animal cover adapted to conform to the shape of an animal's body.

Claim 7 of the present invention teaches the animal cover of claim 5, wherein the temperature altering device is removably located in the plurality of cavities.

The teaching of removable and adjustable cavities is not present in Tadauchi et al., instead it comes only from Applicants' disclosure. Tadauchi et al. does not disclose or enable having removable pockets or even a need for having such pockets. Moreover, there is no enabling disclosure regarding the use of VELCRO to potentially create removable cavities, since Tadauchi et al. clearly states that its head harness is made out vinyl leather, a material which one of reasonable skill in the art would not consider to be compatible with the hook or loop fastening system present in VELCRO. Instead, Tadauchi et al. provides a head harness where only specific, limited predetermined spots on the surface of the head harness are equipped with proper fastening means to allow for the attachment and detachment of the cooling elements.

Taking the disclosure of Tadauchi et al. in light of its drawings, it becomes apparent that the cooling element is attached on the surface of the head harness, namely, on the spot closest to the forehead of the horse. Therefore, Tadauchi et al. does not teach an animal cover adapted to conform to the shape of the animal's body, a plurality of cavities strategically located within the body of the animal cover, or removable cavities capable of being attached and detached at multiple locations throughout the animal cover.

For the above reasons, Tadauchi et al. does not anticipate claim 7 of the present invention.

Claim 6:

Examining Attorney stated that Tadauchi et al. anticipates claim 6 of the present invention because it teaches the temperature altering device being permanently located in the cavities (permanently by not removing the altering device and leaving it in the cavity whenever).

Claim 6 of the present invention teaches an animal cover, wherein the temperature altering device is permanently located in the plurality of cavities.

Tadauchi et al. does not anticipate claim 6 of the present invention, since Tadauchi et al. does not discuss at all whether the cooling device is permanently or removably located in the pocket of the head harness. Examining Attorney did not point to a single reference in Tadauchi et al. that provides enabling, or any, disclosure of the animal cover of claim 6.

Tadauchi et al. does not anticipate claim 6 of the present invention because it fails to teach all of the elements of that claim.

Claim 13:

Examining Attorney stated that Tadauchi et al. anticipates claim 13 of the present invention because it teaches wherein the cavities are adjustable about the body by disconnecting the cavities from the VELCRO.

Claim 13 of the present invention teaches an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, the animal cover comprising: a) a body of the animal cover having an interior and exterior side; b) a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body; and c) a temperature altering device, wherein the plurality of cavities are adjustable about

the body of the animal cover for optimal placement on a variety of differently sized animals.

Tadauchi et al. does not anticipate claim 13 of the present invention because it fails to disclose and enable all of the elements of claim 13. Tadauchi et al. does not disclose an animal cover adapted to conform to the shape of an animal's body, it simply discloses a harness for a horse's head. Tadauchi et al. does not disclose a plurality of cavities located within the body of the animal cover, it simply discloses a pocket containing cooling element located on the surface of the forehead area of the head harness. Similarly, Tadauchi et al. does not disclose a plurality of cavities that are adjustable about the body of the animal cover for optimal placement on a variety of differently sized animals, since the head harness of Tadauchi et al. is made out of such material that the pockets containing cooling element can only be attached to specific predetermined locations on the head harness. The placement of the pockets on the head harness of Tadauchi et al. is predetermined and fixed, while the placement of the plurality of cavities within the body of the animal cover of the present invention is adjustable and variable.

For the above reasons, Tadauchi et al. does not anticipate claim 13 of the present invention, since it fails to disclose all of the elements of that claim.

Claim 16:

Examining Attorney stated that Tadauchi et al. anticipates claim 16 of the present invention because it teaches a horse.

Claim 16 of the present invention teaches a an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, the animal cover comprising: a) a body of the animal cover having an interior and exterior side; b) a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regiment to a targeted area of the animal's body;

and c) a temperature altering device, wherein the animal is selected from the group consisting of horse, dog; llama, sheep and cat.

Tadauchi et al. discloses a harness for cooling the head of a horse, comprising a head harness, and alternatively a neck cover connected to the head harness using hook and loop fastening. The cooling of the horses head takes place using a cooling material that is attached to the head harness using hook and loop. These cooling materials are placed at the forehead region of the horse's head while the harness fasteners are placed at the throat latch of the horse's head.

Tadauchi et al. does not disclose an animal cover adapted to conform to the shape of an animal's body, a plurality of cavities strategically located within the body of the animal cover, or any other elements of claim 16 of the present invention. The head harness of Tadauchi et al. does not disclose or enable the animal cover of the present invention; therefore even though both may be used on horses, one does not anticipate the other.

For the above reasons, Applicants affirm that Tadauchi et al. does not anticipate claim 16 of the present invention.

Claim 18:

Examining Attorney stated that Tadauchi et al. anticipates claim 18 of the present invention because it teaches a method for delivering a temperature altering regimen comprising the steps of altering the temperature of a temperature altering device 21, 24 located within strategically located cavities 22, 23 located about the body of an animal cover 1 having a temperature altering device 21, 24 and being designed and fitted to deliver a temperature altering regimen to specific areas of an animal's body; placing the cover on the body of an animal; allowing a temperature altering device to run its course.

While the Applicants respectfully disagree with Examining Attorney's statement that Tadauchi et al. anticipates claim 18 of the present invention, they nevertheless wish

to cancel without prejudice claim 18 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 18 does not constitute an admission that Tadauchi et al. anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 18 was fully addressed by canceling claim 18 of the present invention.

**Claim 21:**

Examining Attorney stated that Tadauchi et al. anticipates claim 21 of the present invention because it teaches adjusting and properly aligning the cover on the animal so as to allow the altering device to work properly.

While the Applicants respectfully disagree with the Examining Attorney's statement that Tadauchi et al. anticipates claim 21 of the present invention, in order to expedite the prosecution and allowance of the remaining claims Applicants wish to cancel without prejudice claim 21 of the present invention.

In light of the amendments to the claims and the above remarks, Applicants believe that Examining Attorney's rejection of claim 21 is now fully addressed.

**Claim 25:**

Examining Attorney stated that Tadauchi et al. anticipates claim 25 of the present invention because it teaches a horse.

Applicants respectfully disagree with the Examining Attorney's statement; however, in order to expedite the prosecution and allowance of the remaining claims under consideration, Applicants wish to cancel without prejudice claim 25 of the present invention.

Applicants believe that amendments to the claims and the above remarks sufficiently address Examining Attorney's previous rejection of claim 25 of the present invention.

Claim 27:

Examining Attorney stated that Tadauchi et al. anticipates claim 27 of the present invention because it teaches a horse cover for delivering a targeted temperature altering regimen 21, 24 to a specific and defined location of a horse's body comprising a muscle, a muscle group, a joint, a skeletal structure or combinations thereof, wherein the specific and defined location of a horse's body is affected with a problem, the problem comprising aching, soreness, inflammation or swelling, the animal cover comprising: a body 1 of the cover; strategically located cavities 22, 23 about the horse cover for delivering the targeted temperature altering regimen to the specific and defined location of the horse's body.

Claim 27 of the present invention teaches a horse cover for delivering a targeted temperature altering regimen to a specific and defined location of a horse's body comprising a muscle, a muscle group, a joint, a skeletal structure or combinations thereof, wherein the specific and defined location of the horse's body is affected with a problem, the problem comprising aching, soreness, inflammation or swelling, the animal cover comprising: a) a body of the cover; and b) strategically located cavities about the horse cover for delivering the targeted temperature altering regimen to the specific and defined location of the horse's body.

Applicants respectfully state that Tadauchi et al. does not anticipate claim 27 of the present inventions, since Tadauchi et al. fails to disclose any of the elements present in claim 27 of the present invention.

Tadauchi et al. discloses a harness capable of delivering a cooling effect to a horse's head and neck regions. The purpose of delivering the cooling effect is to temporarily decrease the temperature of the horse's body and prevent unwanted effects

associated with overheating, such as fainting, nausea, loss of consciousness and etc... The cooling device disclosed in Tadauchi et al. provides only a cooling effect and targets one specific point on the horse's body, namely, the forehead. Nowhere does Tadauchi et al. disclose delivering a targeted temperature altering regimen, namely cooling and/or heating, to a muscle, a muscle group, and/or a joint. Similarly, Tadauchi et al. does not disclose or even suggest delivering a targeted temperature altering regimen to a specific and defined location on a horse's body with the intent of treating aching, soreness, inflammation or swelling. While the purpose of the animal cover of the present invention is to deliver a therapeutic effect via altering the temperature of a particular area on a horse's body, the purpose of the head harness of Tadauchi et al. is simply to temporarily cool the horse's head in order to prevent the horse from overheating and fainting.

Moreover, Tadauchi et al. does not provide an enabling disclosure of the elements of claim 27 of the present invention. For example, a practitioner wishing to treat soreness in a horse's inner thigh muscle by administering heat to that particular area of the animal's body would not be enabled to do so following a review of Tadauchi et al, since Tadauchi et al. does not discuss administering heat, targeting specific parts of an animal's body, or means of reaching parts of a horse's body other than the head and neck.

Since Tadauchi et al. is silent with regard to the teachings of claim 27, Applicants respectfully request the Examining Attorney to withdraw the above-referenced rejection.

Claim 28:

Examining Attorney stated that Tadauchi et al. anticipates claim 28 of the present invention because it teaches wherein the cavities are strategically located at the specific and defined location of the horse's body by positioning and repositioning the cavities to the area currently affected with the problem, the horse cover being constructed such that the cavities contact and remain at the specific and defined location.

Claim 28 of the present invention teaches a horse cover for delivering a targeted temperature altering regimen to a specific and defined location of a horse's body

comprising a muscle, a muscle group, a joint, a skeletal structure or combinations thereof, wherein the specific and defined location of the horse's body is affected with a problem, the problem comprising aching, soreness, inflammation or swelling, the animal cover comprising: a) a body of the cover; and b) strategically located cavities about the horse cover for delivering the targeted temperature altering regimen to the specific and defined location of the horse's body, wherein the cavities are strategically located at the specific and defined location of the horse's body by positioning and repositioning the cavities to the area currently affected with the problem, the horse cover being constructed such that the cavities contact and remain at the specific and defined location.

Tadauchi et al. does not teach a horse cover of claim 28 because it fails to disclose the elements of that claim. Firstly, Tadauchi et al. does not disclose delivering a targeted temperature altering regimen to a specific and defined location of a horse's body comprising a muscle, a muscle group, a joint, a skeletal structure or combinations thereof, wherein the specific and defined location of the horse's body is affected with a problem, the problem comprising aching, soreness, inflammation or swelling. Tadauchi et al. simply discloses a harness for a horse's head which contains a cooling element, the purpose of such cooling element being limited to providing the horse with temporary relief from overheating. No further therapeutic goals or advantages are disclosed in Tadauchi et al.

Second, Tadauchi et al. does not teach adjustable cavities capable of being repositioned and moved throughout the animal's body, since the head harness of Tadauchi et al. is limited to having predetermined fixed locations for the cooling element on the surface of the harness. The pockets containing the cooling element of the head harness cannot be moved, since the head harness of Tadauchi et al. is made out of vinyl leather, a material which is not conducive to application of a VELCRO fastening system. From the disclosure and drawings of Tadauchi et al. it becomes obvious that only specific predetermined and fixed parts of the head harness are equipped to accept the pocket containing the cooling element, such predetermined and fixed parts located on the surface of the head harness closest to the horse's forehead.

On the contrary, claim 28 of the present invention teaches positioning and repositioning the cavities containing temperature altering elements as may be necessary in order to selectively target a particular area of the animal's body.

For the above reasons, Applicants believe that Tadauchi et al. does not anticipate claim 28 of the present invention. Therefore, Examining Attorney is respectfully requested to withdraw the above rejection.

**Beeghly et al., United States Patent Number 5,537,954 (Beeghly):**

Claims 1, 2, 4-8, 10, 12, 16, 18, 20, 21 and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by Beeghly.

**Claim 1:**

Examining Attorney stated that Beeghly anticipates claim 1 of the present invention because it teaches an animal cover 10 comprising a body having an interior and exterior side; a plurality of cavities 14, 21, 22, 20, 34 strategically located within the body; and a temperature altering device 40.

Claim 1 of the present invention teaches an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, the animal cover comprising: a) a body of the animal cover having an interior and exterior side; b) a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regiment to a targeted area of the animal's body; and c) a temperature altering device.

Beeghly does not anticipate claim 1 of the present inventions because it fails to disclose or enable the elements of that claim. Specifically, Beeghly does not teach a plurality of cavities strategically located within the body. The "affixed pockets" (pockets 14, 21, 22, 20, 34) of the Beeghly reference are hardly strategic in their described location. For example, claim 1 of the Beeghly patent describes the pockets as being

“affixed to the garment at any of various locations,” however, it fails to adequately enable such an overly broad claim since the specification and the figures, particularly figures 1-5, do not disclose these pockets as being affixed to any more than a single location.

Beeghly does not as much as mention any particular areas of the animal’s anatomy with respect to the location of the pockets 14, 21, 22, 20, 34, since the purpose of the Beeghly pet sweater is to simply warm the animal up by raising its overall body temperature, rather than deliver a temperature altering regimen to a specific area of an animal’s body. Therefore, Applicants respectfully disagree with the Examining Attorney’s statement that the pockets of Beeghly pet sweater are “strategically located.”

In the present application, on the other hand, there is a therapeutic strategy to be utilized relating to the location of the pockets. The present application “strategically” places the pockets along various location of the animal cover in order to deliver a temperature-altering regimen to a specifically defined location of the animal’s body (page 1 lines 3-5). The invention is a cover that “delivers a temperature altering regimen directly to a specific location on the horse’s body” (page 3, lines 29-30). The device is “adjustable, allowing the temperature altering regions to precisely fit a variety of differently sized horses on a variety of body areas” (page 3 line 30 to page 4 line 2). The cavities are positioned on the blanket to contact the horse’s spine and spinal muscles, shoulder muscles, hip muscles, stifle joint and c-spine (page 4 line 27 to page 5 line 4). “Cavities 16 can be located at any portion of the horse blanket that is desired. For example, in figure 1B, the cavities are shown strategically located to contact the horse’s thoracic cavity” (page 5, lines 5-7). A temperature altering device can be placed on the flap 12 of the blanket to deliver a temperature altering regimen to the stifle joint, inner thigh, groin and or other horse anatomy positioned in that region (page 5 line 26 to page 6 line 2). The cavity can be adjustable along flap 12 for proper positioning of the temperature altering device, and such adjustment can be accomplished in a variety of ways, including having a cavity that slides along the flap, having a temperature altering device that slides within the flap or other means allowing adjustable positioning of the temperature altering device on the horse and once positioned the temperature altering

device is secured in position on the cover (page 6 lines 12 to 23. Emphasis added.) Reading the claims in light of the specification, it is apparent that the current invention is not directed towards a cover simply having pockets for the delivery of heat, as is described in Beeghly, but instead is describing the targeted delivery of a temperature altering regimen to a precise location of the animal's body. Such delivery is useful for targeting a hot/cold treatment to a part of the animal's anatomy.

It is clear that the Beeghly reference makes no mention of any anatomy of the animal wearer of the disclosed heated pet sweater, nor does the reference describe how its pockets would be adjustably positioned in any location on the sweater. In fact, the Beeghly reference states that "pockets 14 are sewn or otherwise bonded to the garment" (column 5, lines 35-36), and such a permanent affixing of these pockets teaches away from the adjustable pockets for delivering a temperature to a specific targeted area of the body as described in the current invention.

The Beeghly reference does not disclose or suggest adjustably positioned pockets for delivering a targeted temperature altering therapy to a specific location of an animal's anatomy. Anticipation requires that all of the claim elements are present in a prior art reference arranged as recited in the claim. *Richardson v. Suzuki Motor Co.* For an element to be present in a claimed reference, the reference must enable that element. *Scripps v. Genentech*. The absence of any mention of the adjustable positioning of pockets in Beeghly means that there is no disclosure or enablement of this element. Furthermore, the recitation by Beeghly that the pockets are "sewn" or "bonded" onto the pet sweater teaches away from having an adjustable pocket. There is no basis for a rejection of the claims under 35 U.S.C. § 102 based on the Beeghly reference.

For the above reasons, Applicants respectfully request the Examining Attorney to withdraw this rejection.

Claims 2 and 4:

Examining Attorney stated that Beeghly anticipates claims 2 and 4 of the present invention because it teaches the cavities are located in the area as shown in the figures.

Applicants respectfully disagree with the Examining Attorney's argument, since Beeghly clearly shows that the pockets (14, 21, 22, 20, 34) are sewn or bonded to the pet sweater in a single location. There is no mention of these pockets being in any place other than as shown in these figures and further there is no discussion of the various anatomical regions where these pockets will be otherwise located. Applicants invite the Examining Attorney to specifically point them to parts of Beeghly disclosing alternative locations for the pockets other than the locations shown in the figures.

For the reasons set forth above and for the reasons set forth in response to rejection of claim 1 over Beeghly, Applicants respectfully state that Beeghly does not anticipate claims 2-4 of the present invention, since it fails to disclose the elements of these claims. Therefore, Applicants respectfully request the Examining Attorney to withdraw the above rejection with regard to claims 2 and 4 of the present invention.

Claims 5 and 7:

Examining Attorney stated that Beeghly anticipates claims 5 and 7 of the present invention because teaches the temperature altering device being removably located within the cavities.

Applicants respectfully disagree with the Examining Attorney, since Beeghly does not disclose the elements of claims 5 and 7, namely, the pockets disclosed in Beeghly are not the same pockets as those described in the current invention because the pockets in Beeghly are sewn or bonded to the pet sweater in a single location on said pet sweater.

Moreover, Beeghly does not disclose the elements of claims 5 and 7 because there is no mention in Beeghly that the pockets are adjustable pockets capable of being repositioned throughout the animal's body in order to target a temperature altering regimen to a specific location on an animal's body. Beeghly simply discloses a pet sweater capable of raising the animal's body temperature and therefore preventing unwanted effects of hypothermia by placing heat generating elements in the permanently affixed, pre-selected pockets on the surface of the pet sweater.

For the above reasons, Applicants respectfully request the Examining Attorney to withdraw the above rejection of claims 5 and 7.

Claim 6:

Examining Attorney stated that Beeghly anticipates claim 6 of the present invention because it teaches the altering device being permanently located in the cavities in the event a user does not remove it from the cavities.

Applicants respectfully disagree with the Examining Attorney's argument, since Beeghly fails to disclose all of the elements of claim 6 of the present invention. Namely, there is no mention in Beeghly that the pet sweater is capable of adopting to the animal's body, that the plurality of cavities are strategically located throughout the pet sweater, and that the plurality of cavities are capable of targeting a temperature altering regimen to a specific area of the animal's body.

Since Beeghly does not disclose the elements of claim 6 of the present invention, Applicants respectfully request the Examining Attorney to withdraw the above rejection.

Claim 8:

Examining Attorney stated that Beeghly anticipate claim 8 of the present invention because it teaches the cavities form a sealable pocket by snaps 36.

To anticipate claim 8 of the present invention, Beeghly must disclose all of the elements of that claim. This is not the case, since Beeghly fails to disclose an animal cover capable of adapting to the shape of an animal's body, nor does it disclose all of the sealing means recited in claim 8, namely, it fails to disclose the use of zippers to seal the pockets.

For the above reasons, Beeghly does not anticipate claim 8 of the present invention. Therefore, Applicants respectfully request the Examining Attorney to withdraw the above rejection.

**Claim 10:**

Examining Attorney stated that Beeghly anticipates claim 10 of the present invention because it teaches the altering device is removed from the cover and is brought to a desired temperature by placing the altering device in a heated environment.

Beeghly does not anticipate claim 10 of the present invention because it does not disclose an animal cover of the present invention, namely, an animal cover capable of adapting to the shape of the animal's body and having a plurality of cavities strategically located to deliver a targeted temperature altering regimen to specific areas of animal's body.

Therefore, Applicants respectfully request the Examining Attorney to withdraw the above rejection since Beeghly fails to recite all of the elements of claim 10 of the present invention.

**Claim 12:**

Examining Attorney stated that Beeghly anticipates claim 12 of the present invention because it teaches the cavities further comprise a material on the exterior side of the body of the cover that will reflect the temperature emitted from the altering device towards the body of the animal for maximum efficiency of temperature transfer.

Applicants respectfully disagree and state that Beeghly does not anticipate claim 12 of the present invention because it does not disclose an animal cover of the present invention, namely, an animal cover capable of adapting to the shape of the animal's body and having a plurality of cavities strategically located to deliver a targeted temperature altering regimen to specific areas of animal's body.

Therefore, Applicants respectfully request the Examining Attorney to withdraw the above rejection since Beeghly fails to recite all of the elements of claim 12 of the present invention.

Claim 16:

Examining Attorney stated that Beeghly anticipates claim 16 of the present invention because it teaches the animal being a dog.

Applicants respectfully disagree and state that Beeghly does not anticipate claim 16 of the present invention because it does not disclose an animal cover of the present invention, namely, an animal cover capable of adapting to the shape of the animal's body and having a plurality of cavities strategically located to deliver a targeted temperature altering regimen to specific areas of animal's body.

Therefore, Applicants respectfully request the Examining Attorney to withdraw the above rejection since Beeghly fails to recite all of the elements of claim 16 of the present invention.

Claim 18:

Examining Attorney stated that Beeghly anticipates claim 18 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that Beeghly anticipates claim 18 of the present invention, they nevertheless wish to cancel without prejudice claim 18 in order to expedite the prosecution and allowance of

remaining claims under consideration. Canceling claim 18 does not constitute an admission that Beeghly anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 18 was fully addressed by canceling claim 18 of the present invention.

**Claim 20:**

Examining Attorney stated that Beeghly anticipates claim 20 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that Beeghly anticipates claim 20 of the present invention, they nevertheless wish to cancel without prejudice claim 20 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 20 does not constitute an admission that Beeghly anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 20 was fully addressed by canceling claim 20 of the present invention.

**Claim 21:**

Examining Attorney stated that Beeghly anticipates claim 21 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that Beeghly anticipates claim 21 of the present invention, they nevertheless wish to cancel without prejudice claim 21 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 18 does not constitute an admission that Beeghly anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 21 was fully addressed by canceling claim 21 of the present invention.

**Claim 25:**

Examining Attorney stated that Beeghly anticipates claim 25 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that Beeghly anticipates claim 25 of the present invention, they nevertheless wish to cancel without prejudice claim 25 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 25 does not constitute an admission that Beeghly anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 25 was fully addressed by canceling claim 25 of the present invention.

**Uhr, German Patent Document DE20021260U1 (DE260):**

Claims 1-7, 16-18, 21, 25-27 were rejected under 35 U.S.C. 102(b) as being anticipated by DE260.

**Claim 1:**

Examining Attorney stated that DE260 anticipates claim 1 of the present invention because it teaches an animal cover 1 comprising a body having an interior and exterior side; a plurality of cavities 2 strategically located within the body; and a temperature altering device.

DE260 does not anticipate claim 1 of the present invention because it fails to disclose and enable all of the elements of that claim. Namely, DE260 does not disclose an animal cover adapted to conform to the shape of animal's body, nor does it disclose a

plurality of cavities strategically located to deliver a targeted temperature altering regimen to specific areas of an animal's body. Instead, DE260 concentrates on teaching a simple horse blanket capable of protecting the horse from the elements and delivering heat to the horse's body at large, rather than to specific strategically selected areas on the horse's body.

Applicants respectfully state that DE260 does not anticipate claim 1 of the present invention and request the Examining Attorney to withdraw the above rejection.

Claims 2-4:

Examining Attorney stated that DE260 anticipates claims 2-4 of the present invention because it teaches the cavities are located in the area as shown in the figures.

To anticipate claims 2-4 of the present invention, DE260 must disclose all of the elements of these claims. This is not the case, since the figures and specification of DE260 fails to disclose numerous elements present in claims 2-4 of the present invention.

For example, DE260 fails to disclose delivering a temperature altering regimen to the animal's muscle groups, joints, and/or other specific areas of the animal's anatomy. Instead, the figures simply show the pockets located in a single area of the horse blanket, which would allow the horse blanket of DE260 to deliver the warming or cooling effect to the horse's back and shoulders but certainly not to its thighs, hips, stifle joints, elbows, loin, girth and other anatomical parts disclosed in claims 2-4 of the present invention.

Applicants respectfully request the Examining Attorney to withdraw the above rejection of claims 2-4, since DE260 does not anticipate these claims.

Claims 5 and 7:

Examining Attorney stated that DE260 anticipates claims 5 and 7 of the present invention because it teaches the temperature altering device being removably located within the cavities.

Applicants respectfully respond that DE260 does not anticipate claims 5 and 7 of the present invention because it fails to teach all of the elements of claims 5 and 7. Namely, DE260 does not disclose an animal cover capable of adapting to the shape of an animal's body, nor does it disclose a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body. In absence of these elements, DE260 does not anticipate claims 5 and 7 of the present invention.

In light of the above remarks, Applicants respectfully request the Examining Attorney to withdraw rejection of claims 5 and 7 of the present invention.

Claim 6:

Examining Attorney stated that DE260 anticipates claim 6 of the present invention because it teaches the altering device being permanently located in the cavities in the event a user does not remove it from the cavities.

Applicants respectfully respond that DE260 does not anticipate claim 6 of the present invention because it fails to teach all of the elements of claim 6. Namely, DE260 does not disclose an animal cover capable of adapting to the shape of an animal's body, nor does it disclose a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body. Additionally, DE260 is silent regarding the fact whether the heat packs of DE260 are being permanently or temporarily located in the cavities. In absence of an actual anticipatory reference, the Examining Attorney is respectfully invited to elaborate on the specific parts of DE260 providing potentially anticipatory disclosure, if any.

In light of the above remarks, Applicants respectfully request the Examining Attorney to withdraw rejection of claim 6 of the present invention.

Claim 16:

Examining Attorney stated that DE260 anticipates claim 16 of the present invention because it teaches the animal being a horse.

Applicants respectfully respond that DE260 does not anticipate claim 16 of the present invention because it fails to teach all of the elements of claim 16. Namely, DE260 does not disclose an animal cover capable of adapting to the shape of an animal's body, nor does it disclose a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body. In absence of these elements, DE260 does not anticipate claim 16 of the present invention.

In light of the above remarks, Applicants respectfully request the Examining Attorney to withdraw rejection of claim 16 of the present invention.

Claim 17:

Examining Attorney stated that DE260 anticipates claim 17 of the present invention because it teaches the cover being a horse blanket 1 and the animal being a horse.

Applicants respectfully respond that DE260 does not anticipate claim 17 of the present invention because it fails to teach all of the elements of claim 17. DE260 does not disclose an animal cover capable of adapting to the shape of an animal's body, nor does it disclose a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body. In absence of these elements, DE260 does not anticipate claim 17 of the present invention.

In light of the above remarks, Applicants respectfully request the Examining Attorney to withdraw rejection of claim 17 of the present invention.

**Claim 18:**

Examining Attorney stated that DE260 anticipates claim 18 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that DE260 anticipates claim 18 of the present invention, they nevertheless wish to cancel without prejudice claim 18 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 18 does not constitute an admission that DE260 anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 18 was fully addressed by canceling claim 18 of the present invention.

**Claim 21:**

Examining Attorney stated that DE260 anticipates claim 21 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that DE260 anticipates claim 21 of the present invention, they nevertheless wish to cancel without prejudice claim 21 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 21 does not constitute an admission that DE260 anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 21 was fully addressed by canceling claim 21 of the present invention.

Claim 25:

Examining Attorney stated that DE260 anticipates claim 25 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that DE260 anticipates claim 25 of the present invention, they nevertheless wish to cancel without prejudice claim 25 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 25 does not constitute an admission that DE260 anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 25 was fully addressed by canceling claim 25 of the present invention.

Claim 26:

Examining Attorney stated that DE260 anticipates claim 26 of the present invention.

While the Applicants respectfully disagree with Examining Attorney's statement that DE260 anticipates claim 26 of the present invention, they nevertheless wish to cancel without prejudice claim 26 in order to expedite the prosecution and allowance of remaining claims under consideration. Canceling claim 26 does not constitute an admission that DE260 anticipated the cancelled claim.

In light of the amendments to the claims and the above remarks, Applicants believe that the Examining Attorney's rejection of claim 26 was fully addressed by canceling claim 26 of the present invention.

Claim 27:

Examining Attorney stated that DE260 anticipates the horse cover of claim 27 of the present invention.

Applicants respectfully respond that DE260 does not anticipate the horse cover of claim 27 because it fails to disclose all of the elements of that claim. In particular, DE260 does not disclose delivering a targeted temperature altering regimen to a specific and defined location of a horse's body, such as a muscle, a muscle group, a joint, a skeletal structure or combinations thereof. Similarly, DE260 fails to disclose strategically located cavities about the horse cover for delivering the targeted temperature altering regimen to the specific and defined location of the horse's body.

In light of the above remarks, Applicants respectfully request the Examining Attorney to withdraw the above rejection of claim 27.

#### CLAIM REJECTIONS UNDER 35 U.S.C. § 103

A *prima facie* case of obviousness requires a motivation to combine the references, a reasonable expectation of success and a teaching or suggestion of all of the elements of the claims. (See, e.g., *In re Fine*; *In re Skinner*, 2 USPQ2d 1788, 1790 (1986); *Amgen Inc. v. Chugai Pharm. Co.*, F.2d 1200, 1209 (1991); and *In re Wilson*, 424 F.2d 1382, 1385 (1970)). The teaching or suggestion, as well as the expectation of success, must come from the prior art, not applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 493 (1991). Moreover, for a *prima facie* case of obviousness to exist, the art itself must suggest the modification necessary to produce the claimed invention. *In re Gordon*, 221 U.S.P.Q. 1125 (Fed. Cir. 1984).

##### Claims 9 and 19:

Claims 9 and 19 were rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Beeghly.

Although Applicants respectfully disagree with the Examining Attorney's argument that claim 19 of the present invention is obvious over Beeghly, Applicants nevertheless wish to cancel claim 19 in order to expedite the prosecution and allowance

of remaining claims. Therefore, Applicants believe that canceling claim 19 without prejudice fully addresses the above rejection as it applies to that claim.

Examining Attorney stated that for claim 9 Beeghly teaches the temperature altering device being placed in the microwave, which allegedly makes it obvious to one of ordinary skill in the art to place the entire cover of Beeghly in the heated environment.

Applicants respectfully disagree with the Examining Attorney's argument, since the Examining Attorney has not met the burden of demonstrating *prima facie* obviousness of claim 9 in light of Beeghly.

One of ordinary skill in the art would not have a reasonable expectation of success that placing the entire cover of Beeghly in a microwave would produce a substantially similar result to placing only the temperature altering device of Beeghly in a microwave. While Beeghly discloses that its pockets are made out of a thermally passive material which may be appropriate for microwave heating, it is silent with regard to the composition and specific thermal properties of the material from which the cover itself is made. Since many materials are likely to catch on fire if placed in the microwave, a practitioner of reasonable skill in the art would clearly refrain from putting the entire cover of Beeghly in the microwave in absence of a specific teaching authorizing such use.

Since Beeghly does not disclose placing the entire cover in the microwave and only discusses placing the pockets, it does not render obvious the teaching of claim 9 of the present invention. Moreover, Beeghly fails to teach or suggest all of the elements of claim 9. First, Beeghly does not disclose an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body. Second, Beeghly does not disclose a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body. Finally, Beeghly does not disclose placing the entire animal cover in

a refrigerated or heated environment, it only discloses placing the pockets in a heated environment such as the microwave.

In light of the above comments, Applicants respectfully request the Examining Attorney to withdraw the rejection of claim 9.

Claim 11:

Examining Attorney rejected claim 11 of the present invention as being obvious and unpatentable over Beeghly in view of Llamas (U.S. Patent No: 5,361,563).

Claim 11 of the present invention is directed to an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, the animal cover comprising: a) a body of the animal cover having an interior and exterior side; b) a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body; and c) a temperature altering device, wherein the body of the animal cover is made of a material that will wick moisture away from the body of the animal.

Examining Attorney stated that although Beeghly is silent about the cover being of a material that wick moisture, Llamas teaches an animal cover made of a material that wick moisture. Therefore, according to the Examining Attorney, it would have been obvious to one of ordinary skill in the art to combine the references and manufacture the cover of Beeghly using the material that wick moisture as disclosed by Llamas.

Applicants respectfully disagree with the Examining Attorney's above argument, since even when taken together, Beeghly and Llamas do not provide a motivation to combine the references, do not give a reasonable expectation of success, and do not teach or suggest all of the elements of claim 11 of the present invention.

Beeghly discloses a pet sweater the primary purpose of which is to provide a domestic pet such as a dog or hat with temporary relief from cold, where such relief is

provided through pockets on the pet sweater which contain heat emitting elements. It is widely known throughout the art that animals typically sweat as a result of increased body temperature, where such increase in animal's body temperature may result from reasons including but not limited to exercise, disease, increase in temperature of the surrounding environment, and/or a combination thereof. An animal cover that wicks moisture away from the animal's body is beneficial in situations where the animal sweats excessively or is in danger of sweating excessively as a result of strenuous physical activity, disease, heat, or etc...Beeghly does not discuss its animal cover being used in situations where it is necessary to wick moisture away from a sweating animal in order to cool the animal, on the contrary, Beeghly is preoccupied with heating the animal in order to protect the animal from the cold.

Therefore, one of reasonable skill in the art and in possession of the Beeghly disclosure would have no motivation to combine the teaching of Beeghly with that of Llamas in order to create an animal cover of Beeghly that also wicks away moisture.

Moreover, even if taken together, Beeghly and Llamas fail to teach all of the elements of claim 11 of the present invention. Neither Beeghly nor Llamas teach an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, nor do they teach a plurality of cavities strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body.

For the above reasons, Applicants respectfully request the Examining Attorney to withdraw the above rejection of claim 11 of the present inventions.

## CONCLUSION

Applicant respectfully submits that all claims of the present application are now in condition for allowance, and earnestly solicits a notice to such effect. Should any issues or questions remain, the Examiner is encouraged to telephone the undersigned at 858-200-0587 so that they may be promptly resolved without the need for an additional formal action and response thereto.

Respectfully submitted,

Date: Apr. 17, 2004

  
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